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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/199,506	11/25/1998	KENNETH LAWRENCE ACCARDI	15-SV-4769	3772

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EXAMINER

JAROENCHONWANIT, BUNJOB

ART UNIT	PAPER NUMBER
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2141

DATE MAILED: 02/06/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/199,506

Applicant(s)

ZETTEL ET AL.

Examiner

Bunjob Jaroenchonwanit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. In view of the appeal brief filed on 01/07/2003, and in light of new reference found PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

2. Original claims 1-44 are pending for examination, the rejection cited are as stated below.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686

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F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-44 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-59 of U.S. Patent No. 6434572. Although the conflicting claims are not identical, they are not patentably distinct from each other because the context of the claims invention are directed to having a server for automatically handling a service request composed at and sent from a medical diagnostic station claims invention directed to have generating service request from a medical diagnostic station. Including, messaging modules formulate and transmit reply messages transmitted from the server in response to the request. A remote access network connected to the server and the messaging module receives the request and transmits the reply message.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(f) he did not himself invent the subject matter sought to be patented.

6. Claims 1-44 are rejected under 35 U.S.C. 102(f) because the applicant did not invent the claimed subject matter. The Derzay et al. (US 6,434,572) discloses an invention for use in medical diagnostic systems such as imaging system e.g. computed tomography (CT) system, X-ray system, positron emission tomography (PET) system, ultrasound system and nuclear medicine system. Also for image data acquisition, picture archiving communications and retrieval systems, image management systems, facility or institution management systems, viewing systems, etc., in the field of medical diagnostics. The claimed invention automatically handles a service request from a medical diagnostic station. Messaging modules formulate and transmit reply messages transmitted from the server in response to the request. A remote access network (80) connected to the server and the messaging module receives the request and transmits the reply message. The disclosure and the claimed invention also included a centralized service facility and a remote service provision method to medical diagnostic system. After carefully inspection of the instant application and the Derzay reference disclosures, they are almost identical disclosure, in which contain the same subject matter as claimed therein. The disclosures are clearly evident that the subject matter sought to be patented is derived another (see MPEP 2137).

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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8. Claims 1-6, 8-13, 15-23 and 25-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jago et al. (US. 5,938,607) and Friz et al. (US. 5,786,994).

9. Claim 1, Jago disclose the invention substantially, as claimed, including a system for servicing a medical diagnostic apparatus (system 300, fig.2) comprises a diagnostic apparatus (system 10, Fig.1; system 200, 202, Fig.2), including a service server (an HTTP server 30, browser 100, fig.1) for originating a service request and a network communication module for transmitting the service request (TCP/IP module 46, Ethernet connection module 50, fig.1).

Jago further discloses a service facility remote from the diagnostic apparatus (hospital, which includes physician, locates remotely from the diagnostic apparatus, fig.2; Col.9, lines 49-58). The facility includes a network server for receiving the service request and exchange data with the apparatus in response to the service request (servers (400, 500) communicate with the apparatus (200, 202)).

Jago does not explicitly disclose the requested is an operational servicing of diagnostic apparatus service.

However, in the same field of endeavor, motivation by attempting to prevent endangering patients due to failure of the diagnostic apparatus, overcome government regulatory, and minimizing a complex and time consuming task required to control quality of the diagnostic apparatus (Friz, Col. 1, line 63-Col. 2, 67). Friz teaches an improved system that capable of automatically monitoring quality and performance of the diagnostic apparatus, which includes a System 44 comprises laser image stations, e.g., diagnostic apparatus, remote performance monitoring system 46, e.g., a service server, the system 46 automatically generates error port and initiating request for dispatch of a service technician (Friz, Col. 11, lines 3-20), in other words,

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Friz teaches the system can request a service for the apparatus when failure is detected, which equivalent to request for an operational servicing of diagnostic apparatus service.

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to incorporate a feature, e.g., requesting for operational servicing for machines as taught by Friz with a system in the same filed that is readily equipped with necessary elements with required minor modification, as taught by Jago. Because combining the capable of automatically monitoring quality and performance of the diagnostic apparatus, as taught by Friz, Jago's system will operate in more efficiently, lower cost, capable of maintain and control system performance and quality in accordance with government regulatory and most immortally, capable of ensuring safety for the services provided to the patients, which would avoid litigation from endanger patients health, which may result from unexpected system malfunctions.

10. Claim 2, Jago-Friz discloses the diagnostic apparatus includes a network browser user interface for defining the service request originated by the server and transmitted by the network communications module (Jago, Browser 100, Fig.1; Col.8, lines 49-57).

11. Claim 3, Jago-Friz discloses the system includes data storage device coupled to the network server (Jago, image & report storage 24, fig.1 library in HIS 400 RIS 500, fig.2; Col.9, line 49-55). The storage (library) storing service data (Jago, image from ultrasound service, exam categories, Col.9, lines 62-65) representative of identifying or operational parameters (Jago, categories identify type of service abdominal, obstetrical, etc., Col.9, lines 66-67) of the diagnostic apparatus (Jago, Col. 9, line 59-Col. 10, line 15).

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12. Claim 4, Jago-Friz discloses the data representative of a diagnostic apparatus type and location. Specially, Friz teaches a software system configured to monitor system problem, automatically generated error report and automatically dispatch the request for service in response to error condition, Col 3, lines 34-45, dispatching request for service of system remotely located, details information, e.g., type of machine, problem and location are required and thereby inherent, since such details information must be used for reaching destination and preparing service. Thus It would have obvious to one of ordinary skill in the art at the time of the invention was made to include details information such as system type and location when making service request from Jago system. Because, including, such information, would eliminate acquiring information associated with the failure system, which is required for servicing from technicians, hence, service the system can be expedited.

13. Claim 5, Jago-Friz discloses at least one field service unit, the field service unit including a network browser and a network communications module for linking the field service unit to the service facility network server (Jago, apparatus 200, fig.2, comprises Ethernet, Modem and Browser as illustrates in fig. 1, Col. 9, lines 49-58).

14. Claim 6, Jago-Friz discloses the service facility includes a messaging circuit configured to formulate and transmit a message to the diagnostic apparatus in response to the service request the HIS and RIS communicate with diagnostic apparatus at the remote location or in the field by using browser HTML, SMTP, POP (Jago, Fig.1-2; Col.6, lines 7-67; Col.10, lines 15-49). That anticipates the service facility includes a messaging circuit configured to formulate and transmit a message to the diagnostic apparatus in response to the service request.

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15. Claim 8, Jago-Friz discloses the apparatus in claim 8 as discussed in claim 2, including a plurality of diagnostic apparatus (Jago, 200, 202 Fig. 1).

16. Claims 9 and 10, Jago-Friz discloses at least two of the plurality of medical diagnostic systems include stations of the deferent modality types, wherein the types include magnetic resonance imaging stations, computer tomography station, X-ray stations or ultrasound stations (Friz, Col. 1, lines 12-23). For the same reason as discussed in claim 4 above, It would have been obvious to one of ordinary skill in the art at the time of the invention was made to incorporate modality-type information in the system.

17. Claim 11, Jago-Friz discloses at least two of medical diagnostic systems are coupled to a management station via an intranet in a medical facility (diagnostic stations 200, 202; Ethernet Hub 304, administration station 302, fig.2; Col.9, lines 49-53), and wherein the management station is linked to the service facility via the network (administration station 302, Ethernet Hub 304, hospital, service facility 302, fig.2; Col.9, lines 49-53).

18. Claim 12, Jago-Friz discloses the communications circuitry is coupled to the station interface for transmitting data representative of station operating parameters to the service facility (Jago, parameters 82, 84, fig.3; communication means 31-32, 46-50, fig 2; download reference for RIS, Col.9, lines 49-Col.10 lines 15).

19. Claim 13, Jago-Friz discloses each diagnostic system includes a memory circuit for storing log data and wherein the memory circuit transmits the log data and the communication circuitry is coupled to memory circuit and transmitting the log data to the service facility (Jago parameter storage 82, 84, fig.3, modem Ethernet, Fig. 2; report storage 24, Fig. 1; Friz sending error report Fig. 3; Col. 10, line 59-Col. 11, line 44.)

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20. Claim 15, Jago-Friz discloses the invention substantially as described in claims 9 and 13.
21. Claim 16, Jago-Friz discloses a first and second modalities selected from groups of magnetic resonance imaging (MRI) systems, computed exhaust tomography (CT) systems, x-ray systems (XR) and ultrasound systems (US) (Friz, Col.1, lines 11-23; Col. 4, lines 13-41; Col. 6, line 56-Col. 7, line 4).
22. Claim 17, Jago-Friz discloses each station includes an operator interface for initiating a service request for operational servicing of the respective station and a communications circuit for transmitting the service request to the service facility (Jago Browser 100, Fig.2, Ethernet and T1 for Tx/Rx data, see detail Col.3, lines 14-19; Col.8, line 23 – Col.9, line 10; Col.13, lines 6-9).
23. Claims 18-19, Jago-Friz discloses the invention substantially as described in claim 17. It does not explicitly disclose transmit an acknowledgment message.

Official Notice (see MPEP § 2144.03 Reliance on "Well Known" Prior Art) is taken that sending acknowledge was well known in the art. The known feature has been commonly utilized in several fields of data communication, such acknowledge has been utilized in Transport Control Protocol (TCP) to have a reliable data transmission, or in the e-mails utilized acknowledgement, e.g., auto-reply mail, to ensure that the mail has been delivery to eliminate disputing, or computer has been used an acknowledge signal for avoiding delay in data communication between its devices.

Generally, most of the network and/or computer equipment have been designed to wait for signaling response when sending out any form of data, the waiting period would be prolonged until timeout occurring prior to take appropriate actions. Such a waiting will create

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unnecessary delay their operation and degrade their efficiency. Further, in the servicing environment, one factor that has significantly impacted to the service is requesting service does not reach its destination. The loss of service request transforms to a poor service performance and extensive downtime, which could end up with poor performance and endanger patient health that might lead to litigation.

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to incorporate the use of acknowledge message with Jago-Friz. Because, sending acknowledge would minimize or perhaps eliminate the above problems.

24. Claims 20-21, Jago-Friz the serviceable condition includes malfunction and operator usable information of the station (usage report, error report, Friz, abstract).

25. Claim 22 recites limitations as claim 8; Claim 23 recites limitations as claims 20-21; Claim 25 recites limitations as claim 18; Claim 26 recites limitations as claim 4. They are rejected by the same rationale.

26. Claim 27, Jago-Friz discloses a pre-configured browser page accessible on the user interface (Jago Browser 100, Fig.1; Col.8, lines 49-57).

27. Claim 28 Jago-Friz disclose displaying a visual indicia at the medical apparatus (Jago Browser is part of apparatus, 100, Fig.1; Col. 8, lines 49-57; Col.9, lines 49-57).

28. Claim 29 recites similar limitation as in the method in claim 25; Claim 30 recites similar limitation as in the method in claims 29 and 2. They are rejected by the same rationale.

29. Claim 31, Jago-Friz discloses the unique identifier as discussed in claim 26.

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Claim 32, Jago-Friz discloses the invention substantially as described in claim 29, including automatically accessing electronics record (automatically accessing electronic record is inherent in automatically generating report, Friz's abstract).

30. Claims 33-34, Jago-Friz the electronic record includes data representative operational service history (reports include usage report and error report, Friz's abstract).

31. Claim 35, Jago-Friz discloses the invention substantially as described in claim 29, including automatic linking device and facility (automatically sending report, implied automatically linking, Friz's abstract).

32. Claims 36 and 37 are method claims corresponding to the system in claims 15 and 16, respectively.

33. Claim 38 is a method claim corresponding to the system in claim 18. They are rejected by the same rationale.

34. Claim 39 Jago-Friz discloses the service request messages include data uniquely identifying respective diagnostic system. Specially, Friz's requesting service and error report sending out to service technicians or service facility, inherently teaches type of problem related to the respective apparatus, type of apparatus and other related information. Thus, for the same rationale and motivation as discussed in claim 4, above, It would have obvious to one of ordinary skill in the art at the time of the invention was made to incorporate identifying information in the service request as claimed.

35. Claim 40 recites limitations as claims 26, 25 and 19; Claim 41 recites limitations as claims 36, 35 and 29. They are rejected by the same rationale.

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36. Claim 42-43, Jago-Friz discloses the service data includes configuration parameter data for the diagnostic system (Jago, parameter 82, diagnostic parameters 84, fig.3).

37. Claim 44, Jago-Friz discloses the service facility includes a plurality of service facilities disposed at locations remote from one another (the system include hospital, which is one of a service facilities).

38. Claims 7, 14 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jago-Friz as applied to claims 1, 8 and 22, and in view of Love et al. (US. 5,629,871).

39. Claim 7, Jago-Friz discloses the invention substantially as discussed in claim 1, but fails to disclose scheduling operational service of the diagnostic system.

However, in the same field of endeavor, Love teaches an improvement system for laboratory equipment, which capable of monitoring failure of the equipment and scheduling maintenance and repair in order to avoid costly maintenance (abstract, Col. 2, lines 11-30; Fig. 6-8).

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to incorporate scheduling service as taught by Love with Jago-Friz. Because scheduling service, which known in the art as preventive maintenance would prevent unexpected failure, which will lead to endanger patient health, extensive loss of time and revenue, and reducing repair cost.

40. Claims 14 and 24, Jago-Friz discloses the invention substantially as discussed in claim 8, but fail to disclose prompting from the service facility.

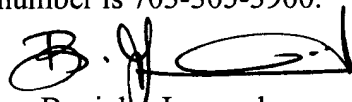
However, in the same field of endeavor, Love teaches an improvement system for laboratory equipment, which capable of generating schedule to send information (abstract, Col. 2, lines 11-30; Fig. 6-8).

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to incorporate the generating schedule feature as taught by Love with Jago-Friz's service facility. In doing so, the combination features would allow the system to timely communication service data among the apparatus, such scheduling or prompting would increase operational efficiency of the system because interrupting of sending and receiving data would be minimized.

41. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bunjob Jaroenchonwanit whose telephone number is 703-305-6973. The examiner can normally be reached on 8:00-17:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on 703-308-5221. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.


Bunjob Jaroenchonwanit
Examiner
Art Unit 2152

/bj
February 4, 2003